

REMARKS

Reconsideration is requested. Claims 1-12 are pending. Responsive to the Office Action of March 18, 2003, the Examiner's comments and the cited art have been noted and studied. For reasons to be set forth in detail below, it is respectfully submitted that the present application is in condition for allowance, and such action is requested.

Independent claims 1, 5 and 10 have been amended to clarify the presently claimed subject matter. In particular, claims 1 and 10 have been amended to recite the presence of a "reagent pad" affixed to the support and "covering the aperture" (support at, for example, original claim 5; page 3, line 19 and page 5, line 1 of the specification). In addition, claims 1, 5 and 10 have been amended to (i) recite that the aperture and portion of the bottom surface correspond to an optical viewing area of a meter, measuring instrument or colorimeter (support at, for example, page 3, lines 26-28 of the specification) and (ii) to clarify awkward phrasing and provide proper antecedent bases. Claim 12 has been amended to clarify its dependency.

It is respectfully submitted that the amendments above are supported by the specification, claims, abstract of the disclosure, and drawings as originally filed, and that no new matter has been added.

35 U.S.C. §112 Rejections:

The subject matter of claims 1-4 was rejected under 35 U.S.C. §112, second paragraph, as indefinite. In particular, the lack of a "testing means" in the body of the claim was questioned. In addition, the subject matter of claim 12 was rejected as being dependent upon itself.

Independent claim 1 has been amended to recite that the test device includes a "reagent pad." The dependency of claim 12 has been corrected. For the foregoing reasons, Applicants respectfully submit that claims 1-4 and 12, as amended, are allowable under 35 U.S.C. §112.

35 U.S.C. §102 Rejections:

The subject matter of claims 1-2 and 10 was rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,299,838 to Hirayama et al., (hereinafter “Hirayama”).

Hirayama, as understood, describes a test apparatus that includes a cover with a sample-supplying hole, a reagent layer, and a support with a measurement hole therethrough (see, for example, col. 3, lines 29-55; col. 5, lines 56-60 and FIGs. 2-3 of Hirayama). Hirayama teaches that a detecting area of the reagent layer be covered by the cover (see col. 3, lines 53-55 and col. 5, lines 10-13 of Hirayama). Hirayama also describes and teaches that at least a portion of the cover that corresponds to the detecting area of the reagent layer be colored, for example colored yellow or black (see col. 3, lines 14-16; col. 4, lines 55-67 and col.5, lines 11-13 of Hirayama).

Independent claims 1 and 10, as amended, each recite the presence of “a reagent pad affixed to the support and covering the sample receiving aperture.” In addition, independent claims 1 and 10 recite that a portion of the support’s bottom surface “surrounding the aperture has a reflectivity of less than about 12 percent at between about 600 and 730nm” and that that portion, along with the aperture, correspond to an optical viewing area of an associated meter (claim 1) or colorimeter (claim 10).

Hirayama does not describe, teach or suggest a test device or system as recited in amended claims 1 and 10. For example, Hirayama does not describe teach or suggest that a reagent pad be affixed to a support such that the reagent pad covers a sample receiving aperture and that the sample receiving aperture and a surrounding portion of the support (which is of a specified reflectivity) correspond to an optical viewing area. Rather, Hirayama describes and teaches that a detecting area be covered by a colored cover.

For at least the foregoing reasons, Applicants submit that the subject matter of amended claims 1 and 10 is neither anticipated not obvious over Hirayama and allowable under 35 U.S.C. §102(e). Since dependent claims necessarily contain the limitations of their parents, dependent claim 2 is allowable for at least the same reasons.

35 U.S.C. §103 Rejections:

The subject matter of dependent claims 3 and 11 was rejected under 35 U.S.C. §103(a) as obvious over Hirayama. Since claims 3 and 11 depend from and further limit independent claims 1 and 10, respectively, they are allowable for at least the same reasons as discussed above with respect to independent claims 1 and 10.

The subject matter of claims 3-9 and 11 was rejected under 35 U.S.C. §103(a) as obvious over Hirayama in view of U.S. Patent No. 5,843,692 to Phillips et al. (hereinafter "Phillips").

Phillips, as understood, describes a glucose assay device in the form of a strip with a reagent pad, hole and notch (see, for example, col. 9, line 44; col. 10, lines 61-65 and col. 11, lines 15-16 of Phillips). Phillips was cited for sample volume and notch teachings.

Independent claim 5 recites that an aperture and portion of a bottom surface of a support correspond to an optical viewing area of a measuring instrument. As explained above with respect to claims 1 and 10, Hirayama does not describe, teach or suggest such a configuration. Phillips does not appear to cure this deficiency. Applicants, therefore, respectfully submit that the subject matter of amended claim 5 is not obvious over the cited combination of Hirayama and Phillips and is allowable under 35 U.S.C. §103(a).

Since claims 3-4, 6-9 and 11 depend from and further limit independent claims 1, 5 and 10, respectively, they are allowable for at least the same reasons as discussed above with respect to independent claims 1, 5 and 10.

CONCLUSION

Applicants respectfully request that, in light of the amendments and explanations above, the Examiner reconsider and withdraw his rejections. Applicants respectfully submit that the claims are in condition for allowance. In the event that minor claim amendments are necessary to meet formal requirements, Applicants invite the Examiner to telephone the undersigned at her direct telephone number (408) 956-4790 so that issuance can be expedited.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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